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10/728,252

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Armin Herb

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06/10/2005

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EXAMINER

REESE, DAVID C

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/728,252

Applicant(s)

HERB, ARMIN

Examiner

David C. Reese

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Amendment: 29 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to Applicant's amendment filed 4/29/2005.

#### *Status of Claims*

- [1] Claims 1-18 are pending.

#### *Claim Objections*

- [2] Claim(s) 15 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 4/29/2005. Accordingly, the objection(s) to the claim(s) 15 has been withdrawn.

#### *Claim Rejections - 35 USC § 102*

- [3] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for

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purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[4] Claims 1-9, 11-12, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kowalski, US 4,460,299, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

As for Claim 1, Kowalski teaches of a fastener comprising a rear grip part (19 in Fig. 1) to be inserted and secured within an elongated hollow body (7) of said elongated hollow body having an elongated first side containing a mounting opening (left adjacent to 14) extending in the elongated direction of said hollow body, said rear grip part (19) insertable in a first position through said mounting opening (left adjacent to 14) into said hollow body and displaceable therein into a second position for gripping with mounting projections (13) within said hollow body (7) said mounting projections extending in the elongated direction of said hollow body, at least one stop (3) positioned exteriorly on the first side of said hollow body along and extending laterally outwardly from opposite sides of said mounting opening, said stop (3) connected to said rear grip part (19) by a fastening means (15) having an axis extending through said stop into said rear grip part whereby a relative rotary movement between the stop (3) and said rear grip part (19) about the axis of said fastening means (15) can be effected, wherein the fastening system includes a transmission system for converting (broadly defined, so thus, broadly understood; the fastener as taught by Kowalski provides its own **transmission system** for these similar processes, as described in part 4 beginning with the last paragraph, as do other teachings from

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numerous other prior art) a translatory movement of said fastening means relative to said stop (3) during the translatory movement into a rotational movement of said rear grip part (19) relative to said stop (3).

Examiner's note: The amendment as submitted by applicant is considered functional language; language that is merely an example of intended use as it fails to further limit the structure of the claimed invention. The prior art needs to only maintain the capacity to perform such a function, and in this case, though the prior art transmission system may occur through manual means, it still satisfies that above function language. Note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*.

As for Claim 2, Re: Claim 1, Kowalski teaches of a fastener wherein said transmission system comprises a slotted member (31 in Figs. 2) and a spring-loaded element (41, 43 in Fig. 2 and 3) wherein said spring-loaded element engages in the slotted member (41 and 43 engaging 31 in Figs. 2 and 3) (once again, broadly defined, so thus, broadly understood).

As for Claim 3, Re: Claim 1, Kowalski teaches of a fastener wherein said slotted member (31 in Figs. 2) of said transmission system has a inclination surface extending from said first position of the fastening system to said second position (41 and 43 engaging the inclination surface of 31 in Figs. 2 and 3 from first to second positions) (once again, broadly defined, so thus, broadly understood).

As for Claim 4, Re: Claim 2, Kowalski teaches of a fastener wherein said rear (19 in Fig. 1) grip part comprises a shaft (27 in Fig. 2) extending parallel to the axis of said fastening means

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(15), said slotted member (31 in Fig. 3) of said transmission system is formed on said shaft (31 is part of 27) and said slotted member comprises a planar surface part (planar part as depicted in 31 of Fig. 3).

As for Claim 5, Re: Claim 4, Kowalski teaches of a fastener wherein said slotted member comprises a groove (groove as shown of the area encompassing 31 in Fig. 3).

As for Claim 6, Re: Claim 2, Kowalski teaches of a fastener whereas said rear grip part (19) comprises a shaft (33 in Fig. 1) extending in the direction of said rear grip part (19) wherein said slotted member (31) of said transmission system is formed on said shaft (relationship of 31 to 33 in Figs. 1-3), and said slotted member (31) comprises a planar surface part (planar part as depicted in 31 of Fig. 3).

As for Claim 7, Re: Claim 6, Kowalski teaches of a fastener wherein said slotted member comprises a groove (groove as shown of the area encompassing 31 in Fig. 3).

As for Claim 8, Re: Claim 6, Kowalski teaches of a fastener wherein a change in inclination relative to said planar surface part is in range of 5 to 50 degrees (31, 41 in Fig. 3).

As for Claim 9, Re: Claim 6, Kowalski teaches of a fastener wherein a change of inclination relative to said planar surface part is in a range of 15 to 45 degrees (31, 41 in Fig. 3).

As for Claim 11, Re: Claim 1, Kowalski teaches of a fastener wherein said transmission system has at least two diametrically opposed slotted members (31 in Fig. 3) wherein said slotted member is engaged by a spring-loaded member (41, 43 engaging 31 in Fig. 3).

As for Claim 12, Re: Claim 6, Kowalski teaches of a fastener wherein one of said slotted members (31 in Fig. 3) of said transmission system is located upstream of an inclination (41 in Fig. 3).

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As for Claim 15, Re: Claim 1, Kowalski teaches of a fastener wherein said fastening means (15) comprises a threaded bolt (15), said rear grip part is connected by said bolt in one of friction-lockingly and force-lockingly engagement (Fig. 1) with said stop (3) and rotatably with said bolt (15), and said bolt has a torque transmission part (broadly defined, so thus, broadly understood; the fastener as taught by Kowalski provides its own torque transmission system for these similar processes, as described in part 4 beginning with the last paragraph, as do other teachings from numerous other prior art) at an end thereof spaced away from said rear grip part (19) projecting radially at least in part from said stop (3).

As for Claim 16, Re: Claim 2, Kowalski teaches of a fastener wherein said spring-loaded element (41 in Fig. 3) comprises a spring loaded guide tip (43 in Fig. 3).

As for Claim 17, Re: Claim 16, Kowalski teaches of a fastener wherein said spring-loaded element is a spring clip (41 in Fig. 3).

### *Response to Arguments*

[5] In view of Applicant's amendments and arguments filed 4/29/2005 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. Examiner notes that Claim 1 has been amended to attempt to help describe the relationship of the transmission system of the instant invention more clearly. The problem, however, is that the language used, as discussed above, is functional language. This language fails to further limit the structure of the claimed invention. The prior art needs to only maintain the capacity to perform such a function, and in this case, though the prior art transmission system may occur through manual means, it still satisfies that above function language, and a manual turning of the nut can, in its most broad

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reasonable interpretation be considered a transmission system. Note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*.

Examiner advises applicant to incorporate additional structure of the transmission system into the instant claim, using the structure of the claimed invention, instead of functional language to help describe the transmission system. That is, describe structurally what differs between the transmission systems of both the applicant and the prior art, which in effect causes the exact system to occur.

As far as the amended statement regarding the “extending laterally outwardly from,” it appears as if, from how the statement is inserted into the instant claim that it is referring to the stop, which would be comparable to the stop 3 of Kowalski, not 35 or 14. The stop 3 of Kowalski, does in fact extend laterally outward.

#### *Allowable Subject Matter*

[6] Claims 10, 13, 14, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

[7] As for Claims 10, 13, 14, and 18, the prior art, incorporating other corresponding limitations as set forth above, does not teach of a helicoidally shaped groove and planar surface



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part, as well as two slotted member segments with their exact orientations and inclinations, and lastly, a spring loaded element between fastening means and said stop.

*Conclusion*

[8] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

[9] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272- 7082. The examiner can normally be reached on 7:30 am - 6:00 pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DCR

Sincerely,  
David Reese  
Assistant Examiner  
Art Unit 3677

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**